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Security Council Committee established pursuant to resolution 1737 (2006)

Note verbale dated 22 February 2007 from the Permanent Mission of Australia to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Australia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1737 (2006) and has the honour to submit to the Council a report pursuant to operative paragraph 19 of resolution 1737 (2006) on the steps taken by the Government of Australia to implement effectively the resolution (see annex).

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Annex to the note verbale dated 22 February 2007 from the Permanent Mission of Australia to the United Nations addressed to the Chairman of the Committee

At 21 February 2007, the Government of Australia (hereafter "Australia") has taken the following steps to implement effectively operative paragraphs 3, 4, 5, 6, 7, 10, 12 and 17 of Security Council resolution 1737 (2006) (hereafter "the Resolution").

I. General — Legislative Change

Australia has promulgated the *Charter of the United Nations (Sanctions — Iran) Regulations 2007* ('the Iran Regulations'), which took effect on 21 February 2007. The purpose of these regulations is to give effect to the Resolution. The Iran Regulations have extraterritorial operation and apply to a person in Australia or a citizen of Australia who is outside Australia.

2. Australia has promulgated new, amending regulations under the *Customs (Prohibited Imports) Regulations 1956* (hereafter the 'Customs Import Regulations') and *Customs (Prohibited Exports) Regulations 1958* (hereafter 'the Customs Export Regulations') to give full effect to territorial aspects of trade restrictions (imports and exports to/from Australian territory). These amended regulations took effect on 20 February 2007. General controls on military and dual use items are contained in existing regulation 13E of the Customs Export Regulations and additionally, in respect of WMD-related goods and services, in the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995* (hereafter 'the WMD Act').

II. Implementation of Specific Obligations under Operative Paragraphs 3, 4, 5, 6, 7, 10 and 12

Measures taken in accordance with Operative Paragraph 3: Prohibition on supply of specified items which could contribute to Iran's enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapons delivery systems

3. Operative Paragraph (OP) 3 requires states to take the necessary measures to prevent the supply, sale or transfer to Iran or for the use in or benefit of Iran of items specifically designated under OP 3 (a), (b) and (c) of the Resolution in documents S/2006/814 (nuclear-related items) and S/2006/815 (missile-related items), as well as any other items determined under OP 3 (d) by the Security Council or the Committee established by OP 18 (Committee).

4. Australia is implementing OP 3 under the Customs Export Regulations, the Iran Regulations and the *Weapons of Mass Destruction Act 1995*.

A. Customs Export Regulations

5. Australian export controls related to the export of military and dual-use technologies are implemented under the *Customs Act 1901* and Regulation 13E of the Customs Export Regulations. Export controls under these regulations cover a wide range of defence and related goods and technologies, nuclear related goods and goods and technologies with both civil and military applications. The controls also cover goods being exported after or for repair, and the temporary export of items for demonstration or loan purposes. The list of goods controlled forms the Defence and Strategic Goods List (DSGL) and includes equipment, assemblies and components,

associated test, inspection and production equipment, materials, software and technology.

6. The export of military and specified dual-use technologies listed in the DSGL is controlled under Regulation 13E of the Customs Export Regulations. Regulation 13E provides that it is an offence to export goods on the DSGL without the approval of the Minister for Defence or his delegate. All items listed by the UN Security Council in its documents S/2006/814 and S/2006/815 are included in the DSGL. The Minister for Foreign Affairs has written to the Minister for Defence advising him of Australia's obligations under Resolution and requesting that he exercise his powers under the Customs Export Regulations accordingly to deny any applications to export items covered by OP 3 or OP 4.

7. Items not controlled by Customs Regulation 13E will be included under the new Regulation 13CQ of the Customs Export Regulations. This regulation prohibits the exportation of *listed goods*, the immediate or final destination of which is, or is intended to be, Iran without the written permission of the Minister for Foreign Affairs. *Listed goods* are those items determined by the Minister for Foreign Affairs under Regulation 18 of the Iran Regulations and are intended to cover goods which are not listed in the DSGL but which should be controlled to give effect to the Resolution.

8. The Australian Customs Service has published Australian Customs Notice 2007/12 to advise industry of the changes. Each export application is considered by relevant agencies on a case-by-case basis, taking into account the stated end-use and end-user. The processing of export applications which are considered to be sensitive because of the stated end-use or end-user includes a diversion risk assessment.

9. More detailed information on Australia's export control regime, and a copy of the DSGL, is available on the Australian Department of Defence website at http://www.defence.gov.au/strategy/dtcc

B. Iran regulations 2007

10. The Iran Regulations give extraterritorial effect to the embargo on military and dual use goods (WMD-related goods) in respect of Australian nationals and supplement the Customs Act regime in relation to supplies, sales or transfers to Iran through Australian territory. The Regulations control any supply, sale or transfer of sanctioned goods under OP 3 (or OP 4) which is not permitted under the Customs Export Regulations outlined above. The Regulations apply to persons in Australia and citizens of Australia who are outside of Australia. The Regulations also provide for the ban on related advice, assistance and training, and the use of Australian vessels and aircraft, as required by the Resolution.

11. Regulation 7 (1) of the Iran Regulations provides that a person must not engage in conduct that results in the supply, sale or transfer of *export-controlled goods* to Iran, or for use in Iran, or for the benefit of Iran, or to a recipient in Iran, or for the benefit of a recipient in Iran, without the permission of the Minister for Foreign Affairs.

12. *Export controlled goods* are defined to include all items, materials, equipment, goods and technology in Security Council documents S/2006/814 and S/2006/815 (collectively referred to as *WMD-related goods*) as well as any other items, materials, equipment, goods and technology that are included on an additional list of

export-controlled goods determined by the Minister for Foreign Affairs under subregulation 18 (1). Regulation 18 provides scope for the Minister for Foreign Affairs to restrict the supply of any additional items determined by the Security Council or the Committee under OP 3 (d), as necessary.

Australian Aircraft and Ships

13. Regulation 11 imposes specific obligations in relation to Australian aircraft and ships. Regulation 11(1) provides that the owner, pilot in command or operator of an Australian aircraft must not allow the aircraft to be used in a way that results in the supply, sale or transfer of *export-controlled goods* to Iran, or for use in Iran, or for the benefit of Iran, or to a recipient in Iran, or for the benefit of a recipient in Iran. Regulation 11(2) provides that the owner, master or operator of an Australian ship must not allow the ship to be used in a way that results in the supply, sale or transfer of *export-controlled goods* to Iran or for use in Iran, or for the benefit of Iran, or to a recipient in Iran or for the benefit of a recipient in Iran.

14. The Australian Department of Transport and Regional Services will arrange for the publication of a Marine Notice and a Notice to Airmen to advise operators of the requirements of the regulations. These measures will clearly inform Australian-flagged vessels and aircraft of their obligations under the Resolution.

C. Weapons of Mass Destruction Act

15. Australia also applies catch-all controls contained in the WMD Act. This Act and its derived Regulations provide controls for goods, technologies and services not regulated by the Customs Act. The WMD Act prohibits the provision of non-regulated goods or services where there is a reasonable suspicion or belief that the goods or services would or may assist a WMD program. The WMD-related controls regulate the export and transfer, both within and outside Australian territory, of otherwise uncontrolled technologies. The WMD Act's jurisdiction extends to the transfer of intangibles and transfers via intangible means (for example, electronic, photonic).

Measures taken in accordance with Operative Paragraph 4: Prohibition on the supply of other items which States determine would contribute to enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapon delivery systems, or the pursuit of activities related to other topics about which the IAEA has expressed concerns or identified as outstanding

16. The controls outlined above in respective of OP 3 implement OP 4(a) by controlling the supply, sale or transfer of all items included in Security Council documents S/2006/814 and S/2006/815. Giving effect to OP 4 (b) and (c), the Minister for Foreign Affairs has the power under regulation 18(1) of the Iran Regulations to determine an additional list of items which constitute *export controlled goods* (in addition to items included in S/2006/814 and S/2006/815). Regulation 13CQ of the Customs Export Regulations incorporates into the customs control regime any additional goods listed by the Minister for Foreign Affairs under Regulation 18(1) of the Iran Regulations.

Measures taken in accordance with Operative Paragraph 5: Ensure appropriate safeguards for the supply of items in documents S/2006/814 and S/2006/815 the supply of which is not prohibited absolutely under the Resolution; and to notify the Committee and/or the IAEA within ten days

17. The Australian Government implements the safeguards requirements of OP 5 through its established defence and strategic goods export control regime and as a member of the Nuclear Supplier's Group (NSG) and the Missile Technology Control Regime (MTCR). Any approvals for the supply to, for the use in, or for the benefit of Iran, of items covered by documents S/2006/814 and S/2006/815 will meet the safeguards requirements of OP 5. Any such approval will be notified to the Committee and/or the IAEA within ten days, as appropriate.

Measures taken in accordance with Operative Paragraph 6: Prevent the provision to Iran of any technical assistance or training, financial assistance, investment, brokering or other services, and the transfer of financial resources or services, related to the supply, sale, transfer, manufacture, or use of prohibited items under paragraphs 3 and 4

18. Regulation 8 (1) of the Iran Regulations provides that a person must not engage in conduct that results in the provision to Iran, or for use in Iran, or for the benefit of Iran, or to a recipient in Iran, or for the benefit of a recipient in Iran, of technical assistance, technical training, financial assistance or investment, brokering or other services, relating to the supply, sale, transfer, manufacture or use of *export-controlled goods*.

19. Regulation 8 (2) of the Iran Regulations provides that a person must not engage in conduct that results in the transfer to Iran or for use in Iran or for the benefit of Iran or to a recipient in Iran or for the benefit of a recipient in Iran, of financial resources or services, relating to the supply, sale, transfer, manufacture or use of *export-controlled goods*.

20. As noted above, export controlled goods includes all goods included in documents S/2006/814 and S/2006/815 as well as any other goods listed by the Minister for Foreign Affairs under Regulation 18(1) of the Iran Regulations.

21. In addition, the general controls in the WMD Act apply in respect of the provision of goods or services, including intangibles.

Measures taken in accordance with Operative Paragraph 7: Prohibit the procurement of items in documents S/2006/814 and S/2006/815 from Iran

22. Regulation 10 of the Iran Regulations provides that a person must not engage in conduct that results in the procurement of *WMD-related goods* from Iran or any person in Iran, regardless of whether the goods originated in Iran. As noted above WMD-related goods include all items included in documents S/2006/814 and S/2006/815.

23. New regulation 4Z of the Customs Import Regulations prohibits the importation from Iran to Australia of any items, materials, equipment, goods and technology listed in documents S/2006/814 and S/2006/815. Such goods may only be imported with the permission of the Minister for Foreign Affairs of Australia. Imports will not be approved in accordance with the requirements of OP 7.

Measures taken in accordance with Operative Paragraph 10: Impose travel restrictions on individuals associated with Iran's proliferation sensitive nuclear activities and notify the Committee of the travel by designated persons

24. Australia has a universal visa system requiring people entering Australia to obtain a visa before travel. These visas are processed offshore before the commencement of travel.

25. All individuals designated by the Security Council in the Annex to Resolution 1737 have been placed on the Movement Alert List (MAL) maintained by the Department of Immigration and Citizenship (DIAC). The MAL is electronically accessible by DIAC officers posted to Australia's diplomatic and consular missions worldwide. A complete MAL update is sent electronically at least daily to Australia's overseas missions. A check is conducted against the MAL prior to any decision to grant a visa to Australia, and again prior to a traveller's arrival in Australia. Additional checks are also undertaken at Australian entry points to ensure that any person listed on the MAL subsequent to a visa grant is identified. Where an individual is listed on the MAL, further enquiries must be made before a visa can be issued.

26. The Australian Government has in place established procedures to screen visa applicants and holders for connections to weapons of mass destruction. Under existing Australian legislation (Regulation 2.43(1) and Public Interest Criteria 4003(b) and 4003A of the *Migration Regulations 1994*), the Minister for Foreign Affairs may determine that a holder of a visa is a person whose presence in Australia may be directly or indirectly associated with the proliferation of weapons of mass destruction. The Minister for Foreign Affairs may also determine that a visa applicant is a person whose presence in Australia may be directly or indirectly associated with the proliferation of weapons of mass destruction. Should the Minister for Foreign Affairs make a determination in this regard, the Minister for Immigration and Citizenship would cancel or refuse the visa in question.

27. The Minister for Foreign Affairs will consider making such a determination in respect of persons designated by the Security Council or the Sanctions Committee, and any other persons who are of WMD-concern. Such persons would not be permitted to enter into, or transit through, Australian territory.

Measures taken in accordance with Operative Paragraph 12: Impose financial restrictions on designated persons or entities, or by persons or entities acting on their behalf or at their direction, or by entities owned or controlled by them

28. Australia has implemented the obligation in OP 12 of the Resolution to freeze the assets of listed individuals and/or entities (referred to as 'designated persons' and 'designated entities') and to prohibit the making of financial assets available to such persons through the Iran Regulations. Designated persons and entities include those designated in the Annex to the Resolution, as well as any additional persons or entities designated by the Committee or by the Security Council for the purpose of OP 12 of the Resolution. In addition, 'designated persons' or 'designated entities' include those acting on behalf of, or at the direction of, persons or entities directly designated, as well as entities owned or controlled by such persons or entities.

29. Regulation 13 of the Iran Regulations provides that a person commits an offence if the person holds a freezable asset and uses or deals in the freezable asset (including allowing or facilitating such use or dealing). 'Freezable assets' are those assets owned or controlled, directly or indirectly, in Australia by designated persons or designated entities. Regulation 14 of the Iran Regulations provides that a person

commits an offence if the person, directly or indirectly, makes an asset available to a designated person or a designated entity.

30. Should additional persons or entities be listed by the Committee, an obligation to freeze the assets of that individual or entity, and to avoid making assets available to that individual or entity, is automatically activated under Australian law.

31. Regulation 15 of the Iran Regulations provides that the Minister for Foreign Affairs can authorize otherwise prohibited dealings under regulations 13 or 14. The Minister can exercise this power to allow for dealings which have been approved by the Committee as exemptions under OP 13, OP 14 or OP 15 of the Resolution.

32. While it is the responsibility of banks and other financial institutions to ensure they comply with any requirements to freeze the assets of their clients, the Australian Government will facilitate compliance with the legislation and assist the financial sector in a number of ways. The Department of Foreign Affairs and Trade (DFAT) will publish a list of persons that have been designated by the Security Council under the Resolution, including in electronic form available to the public on the Internet. DFAT will incorporate designated persons on a centralized 'UN Security Council Sanctions' e-mail service through which DFAT will alert financial institutions and other asset holders of any updates to the list. Asset holders will be able to subscribe to this service. DFAT will also provide asset holders with list matching software ("LinkMatchLite") that financial institutions can use to cross-check their databases with the Security Council sanctions list.

33. In addition, the Australian Transaction Reports and Analysis Centre (AUSTRAC) will consider issuing an information circular to its reporting entities (e.g. financial institutions) with reference to their financial obligations under the Iran Regulations implementing the financial restrictions imposed by the Resolution. The circular would also remind reporting entities of their obligations under section 16 of the Financial Transaction Reports Act 1988 concerning the reporting of suspect transactions.

Measures taken in accordance with Operative Paragraph 17: Prevent specialized teaching or training of Iranian nationals which would contribute to Iran's proliferation sensitive nuclear activities and development of nuclear weapon delivery systems

34. As described above, the Australian Government has in place established mechanisms to assess visa applicants and visa holders to determine whether they pose a WMD-proliferation risk.

35. In addition, the WMD Act prohibits the provision of services where there is a reasonable suspicion or belief that the services would or may assist a WMD program. Section 4 of the Act provides that the provision of services includes working as an employee, consultant or adviser, or providing training, or providing technological information or know-how, or procuring another to supply or export goods or provide services. This prohibition applies extraterritorially to Australian nationals overseas.

36. Together, these mechanisms and the prohibition in the WMD Act satisfy the requirement in OP17 to prevent the specialised teaching or training of Iranian nationals in areas of WMD concern, both within Australia and by Australian nationals outside Australia.